

**MARGOLIS EDELSTEIN**

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Dawn Dezii, Esquire  
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Attorneys for Defendant, First Choice Ingredients, Inc.  
File No.: 38500.1-00235

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TERRY BETHMAN,	:	Civil Action
	:	
	:	
Plaintiff	:	<b>JURY TRIAL REQUESTED</b>
	:	
v.	:	Case No.: 2:19-CV-04735-GEKP
	:	
BELL FLAVORS AND FRAGRANCES	:	
INC., et al.	:	
	:	<b>ANSWER, SEPARATE DEFENSES,</b>
	:	<b>CROSSCLAIMS, DENIAL OF</b>
Defendants.	:	<b>CROSSCLAIMS, JURY TRIAL</b>
	:	<b>DEMAND</b>

Defendant, First Choice Ingredients, Inc., by way of Answer to the Plaintiff's Complaint says:

1. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained within this paragraph. As such, Plaintiff is left to his proofs.

2. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the

allegations contained within this paragraph. As such, Plaintiff is left to his proofs.

3. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

4. The allegations contained within this paragraph are denied as to the Answering Defendant and Plaintiff is left to its proofs.

5. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

6. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

7. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

8. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response

is required. To the extent a response is required, denied as to Answering Defendant.

9. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

10. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

11. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

12. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

13. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

14. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response

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15. The allegations contained within this paragraph are denied as to the Answering Defendant and Plaintiff is left to its proofs.

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19. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

20. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response

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21. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

22. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

23. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

24. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

25. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

26. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response

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27. The allegations contained within this paragraph are denied as to the Answering Defendant and Plaintiff is left to its proofs.

28. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

29. The allegations contained within this paragraph are denied as to the Answering Defendant and Plaintiff is left to its proofs.

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31. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

**FACTS COMMON TO ALL COUNTS**

32. The allegations contained within this paragraph are denied as to Answering Defendant. This is not a proper factual

pleading and as such, no response is required. To the extent a response is required, denied as to Answering Defendant.

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**ANSWER TO FIRST CAUSE OF ACTION**

**STRICT LIABILITY: MANUFACTURING DEFECT**

53. The allegations contained within this paragraph are denied as to Answering Defendant. This is not a proper factual pleading and as such, no response is required. To the extent a response is required, denied as to Answering Defendant.

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**ANSWER TO SECOND CAUSE OF ACTION**

**STRICT LIABILITY: DESIGN DEFECT**

62. The allegations contained within this paragraph are denied as to Answering Defendant. This is not a proper factual pleading and as such, no response is required. To the extent a response is required, denied as to Answering Defendant.

63. The allegations contained within this paragraph are denied as to Answering Defendant. This is not a proper factual pleading and as such, no response is required. To the extent a response is required, denied as to Answering Defendant.

64(a-b). The allegations contained within this paragraph are denied as to Answering Defendant. This is not a proper factual pleading and as such, no response is required. To the extent a response is required, denied as to Answering Defendant.

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73. The allegations contained within this paragraph are denied as to Answering Defendant. This is not a proper factual

pleading and as such, no response is required. To the extent a response is required, denied as to Answering Defendant.

**ANSWER TO THIRD CAUSE OF ACTION**

**STRICT LIABILITY: FAILURE TO WARN**

74. The allegations contained within this paragraph are denied as to Answering Defendant. This is not a proper factual pleading and as such, no response is required. To the extent a response is required, denied as to Answering Defendant.

75. The allegations contained within this paragraph are denied as to Answering Defendant. This is not a proper factual pleading and as such, no response is required. To the extent a response is required, denied as to Answering Defendant.

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85. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained within this paragraph. As such, Plaintiff is left to his proofs.

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**ANSWER TO FOURTH CAUSE OF ACTION**

**NEGLIGENCE**

87. The allegations contained within this paragraph are denied as to Answering Defendant. This is not a proper factual pleading and as such, no response is required. To the extent a response is required, denied as to Answering Defendant.

88. The allegations contained within this paragraph are denied as to Answering Defendant. This is not a proper factual pleading and as such, no response is required. To the extent a response is required, denied as to Answering Defendant.

89. The allegations contained within this paragraph are denied as to Answering Defendant. This is not a proper factual pleading and as such, no response is required. To the extent a response is required, denied as to Answering Defendant.

90(a-k). The allegations contained within this paragraph are denied as to Answering Defendant. This is not a proper



factual pleading and as such, no response is required. To the extent a response is required, denied as to Answering Defendant.

91. The allegations contained within this paragraph are denied as to Answering Defendant. This is not a proper factual pleading and as such, no response is required. To the extent a response is required, denied as to Answering Defendant.

92. The allegations contained within this paragraph are denied as to Answering Defendant. This is not a proper factual pleading and as such, no response is required. To the extent a response is required, denied as to Answering Defendant.

93. The allegations contained within this paragraph are denied as to Answering Defendant. This is not a proper factual pleading and as such, no response is required. To the extent a response is required, denied as to Answering Defendant.

94. The allegations contained within this paragraph are denied as to Answering Defendant. This is not a proper factual pleading and as such, no response is required. To the extent a response is required, denied as to Answering Defendant.

**ANSWER TO FIFTH CAUSE OF ACTION**

**STRICT LIABILITY: MANUFACTURING DEFECT**

95. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

96. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

97. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

98. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

99. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

100. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

101. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

102. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

103. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

**ANSWER TO SIXTH CAUSE OF ACTION**

**STRICT LIABILITY: DESIGN DEFECT**

104. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

105. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

106(a-b). The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

107. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response

is required. To the extent a response is required, denied as to Answering Defendant.

108. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

109. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

110. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

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required. To the extent a response is required, denied as to Answering Defendant.

114. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

115. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

**ANSWER TO SEVENTH CAUSE OF ACTION**

**STRICT LIABILITY FAILURE TO WARN**

116. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

117. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

118. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

119. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

120. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

121. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

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128. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

**ANSWER TO EIGHTH CAUSE OF ACTION**

**NEGLIGENCE**

129. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

130. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response

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131. The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

132(a-k). The allegations contained within this paragraph are not directed toward Answering Defendant. As such, no response is required. To the extent a response is required, denied as to Answering Defendant.

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**SEPARATE DEFENSES**

1. The Court lacks subject matter jurisdiction.
2. The Court lacks personal jurisdiction.
3. Answering Defendant owed no duty or obligation to the Plaintiff herein.
4. Answering Defendant fulfilled each and every obligation or duty owed to the Plaintiff herein.
5. The injuries and damages, if any, sustained by the Plaintiff were the result of the Plaintiff's own contributory negligence and, accordingly, Plaintiff is debarred from recovery.
6. The injuries and damages, if any, sustained by the Plaintiff are the result of the conduct of third-parties over whom Answering Defendant had neither control nor right of control.
7. Service of process was improper.
8. Plaintiff is not entitled to seek recovery against this Defendant as it had no actual or implied contractual relationship.
9. Answering Defendant had no business relationship with the Plaintiff.

10. Answering Defendant was not in an agency relationship with any of the Co-Defendants.

11. Plaintiff fails to state a claim upon which relief may be granted.

12. Plaintiff was not a foreseeable user of the Defendant's product.

13. Plaintiff is guilty of estoppel and/or waiver.

14. Plaintiff is guilty of laches.

15. This matter is barred by the applicable statute of limitations.

16. The Complaint fails to join all indispensable parties.

17. Plaintiff failed to mitigate her damages.

18. Plaintiff has been made whole.

19. Answering Defendant denies the negligence alleged.

20. The Plaintiff's alleged injuries and losses are diminished by virtue of comparative negligence.

21. The Plaintiffs' alleged injuries and losses were caused by the Plaintiff's assumption of the risk.

22. The Plaintiff's alleged injuries and losses, if any, were caused by the misuse of products and other actions either by Plaintiff or by other persons over whom this Defendant exercised no control nor right of control.

23. The injuries and damages allegedly sustained by the Plaintiff were not caused by any product manufactured, produced

or sold by this Defendant, but were caused by some other product, process or event, including but not limited to the operation of nature, over which this Defendant exercised no supervision and control, and for which it was not responsible.

24. There were no expressed or implied warranties made by this Defendant to the Plaintiff.

25. At all times alleged in the Complaint, this Defendant followed the plans, specifications and contracts of a governmental entity and did not deviate from said plans, specifications and contracts and is thus cloaked with immunity.

26. Plaintiff's Complaint is barred by the exclusive remedy provision of the Workers' Compensation Act of any applicable state.

27. The injuries allegedly suffered by the Plaintiff are due to an idiosyncratic reaction on the part of Plaintiff. As such, this Defendant is not responsible therefore.

28. There exists no privity between this Defendant and the Plaintiff. Therefore, the Defendant is not responsible to Plaintiff in connection with the Plaintiff's alleged injuries.

29. The Plaintiff's claims are barred in whole or in part by the applicable state-of-the-art defense.

30. The legal basis and concept of punitive damages is inapplicable and should not be applied to this Defendant.

31. The legal basis and concept of strict liability is inapplicable and should not be applied to this Defendant.

32. The Plaintiff's claims are barred by the applicable statute of limitation or statute of repose.

33. Plaintiff's Complaint is barred by federal preemption.

34. The Plaintiff's claims are barred by the governmental contract defense.

### **CROSSCLAIMS**

#### **FIRST COUNT**

Please take notice that the Answering Defendant demands contribution from all Co-Defendants pursuant to the Pennsylvania Fair Share Act or any other applicable jurisdiction's law regarding apportionment, crossclaims and indemnity.

WHEREFORE, the Answering Defendant seeks indemnification against all Co-Defendants for any judgment rendered in favor of the Plaintiff, together with costs of investigation, defense, reasonable counsel fees and such other relief as the Court deems just and proper.

#### **SECOND COUNT**

Under the allegations of the Complaint, the damages, if any, sustained by the Plaintiff were the result of the sole, culpable acts of negligence or other wrongful doing of the Co-Defendants entitling this party to indemnification.

WHEREFORE, the Answering Defendant seeks indemnification against all Co-Defendants for any judgment rendered in favor of the Plaintiff, together with costs of investigation, defense, suit and reasonable counsel fees and such other relief as the Court deems just and proper.

**THIRD COUNT**

Under the allegations of the Complaint, the damages, if any, sustained by the Plaintiff were the result of the breach of warranty and/or breach of the duties of strict liability in tort of the Co-Defendants entitling this party to indemnification.

WHEREFORE, the Answering Defendant seeks indemnification against all Co-Defendants for any judgment rendered in favor of the Plaintiff, together with costs of investigation, suit, defense and reasonable counsel fees and such other relief as the Court deems just and proper.

**DENIAL OF ALL CROSSCLAIMS**

Answering Defendant hereby denies any and all cross-claims which are or which may be asserted against it in this matter, including but not limited to claims for common law indemnity, contribution, contractual indemnity or breach of contract.

**JURY TRIAL DEMANDED**

Demand is hereby made for trial by jury as to all issues.

**MARGOLIS EDELSTEIN**

Attorneys for Defendant,  
First Choice Ingredients, Inc.

By: /s/ Dawn Dezii  
DAWN DEZII, ESQUIRE  
Attorney I.D. No.: 54165  
The Curtis Center, Suite 400E  
170 S. Independence Mall West  
Philadelphia, PA 19106-3337  
Phone: 215-922-1100

Dated: October 24, 2019

**MARGOLIS EDELSTEIN**

The Curtis Center  
 170 S. Independence Mall W.  
 Suite 400E  
 Philadelphia, PA 19106  
 215-922-1100  
 Dawn Dezii, Esquire  
 Jeanine D. Clark, Esquire  
 Attorneys for Defendant, First Choice Ingredients, Inc.  
 File No.: 38500.1-00235

**UNITED STATES DISTRICT COURT  
 FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TERRY BETHMAN,	:	Civil Action
	:	
	:	
Plaintiff	:	<b>JURY TRIAL REQUESTED</b>
	:	
v.	:	
	:	Case No.: 2:19-CV-04735-GEKP
BELL FLAVORS AND FRAGRANCES	:	
INC., et al.	:	
	:	
Defendants.	:	<b>CERTIFICATION OF SERVICE</b>
	:	

I, Dawn Dezii, Esquire, do hereby certify as follows:

1. I am an attorney at law of the Commonwealth of Pennsylvania with the law firm of Margolis Edelstein. I am admitted to practice before the United States District Court for the Eastern District Court of Pennsylvania. This office represents Defendant, First Choice Ingredients, Inc., in connection with the present litigation and as such, I am fully familiar with the facts and circumstances of the within matter.

2. I certify that on this date, I served copies of the within Answer to the Plaintiff's Complaint, Jury Demand,

Affirmative Defenses, Crossclaims and Denial of all Crossclaims  
via *ECF* on all counsel of record and upon the Court via *ECF*.

3. Pursuant to 28 U.S.C. §1746, I certify under penalty  
of perjury that the foregoing is true and correct.

**MARGOLIS EDELSTEIN**

Attorneys for Defendant,  
First Choice Ingredients, Inc.

By: /s/ Dawn Dezii  
Dawn Dezii, Esquire  
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Dated: October 24, 2019